

ENTERED IN BOOKET
DATE 1/6/94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

LMS HOLDING COMPANY,
PETROLEUM MARKETING COMPANY
AND RETAIL MARKETING COMPANY,

Debtors.

BARRY DILL and DIANA DILL,
husband and wife,

Plaintiffs,

vs.

THE SOUTHLAND CORPORATION,
a corporation, CONTEMPORARY
INDUSTRIES SOUTHERN, INC.,
an Oklahoma corporation,
and RETAIL MARKETING COMPANY,
an Oklahoma corporation,

Defendants.

Administratively Consolidated
Under Case No. 91-03412-C
(Chapter 11)

State Court Case No. C-93-1438

District Court
Case No. 93 C 1154-B

FILED

JAN 06 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This cause comes before the Court on the Application To Strike Notice Of Removal Or, Alternatively, For Summary Remand filed by Defendant, Retail Marketing Company.

The Court being fully advised in the premises hereby finds that the Notice of Removal filed on December 30, 1993 was improperly filed in this Court inadvertently and by mistake, and that good cause exists to strike the same.

IT IS THEREFORE ORDERED that the Notice of Removal filed on December 30, 1993 is hereby stricken.

DATED this 6th day of January, 1994.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
Thomas A. Creekmore
Pamela H. Goldberg
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR DEFENDANT,
RETAIL MARKETING COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 07 1994

DOLLAR SYSTEMS, INC., a Delaware
Corporation,

Plaintiff,

vs.

OBSIDIAN LIVERY, INC., a Louisiana
Corporation, and LES MATTHEWS,
an individual,

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-1018-B

JOURNAL ENTRY OF JUDGMENT

Now on this 7th day of Jan., 1994, by agreement of
the parties, the Court finds that Dollar Systems, Inc., is
entitled to Judgment against Obsidian Livery, Inc., and
judgment is hereby entered against Obsidian Livery, Inc. and
in favor of Dollar Systems, Inc. in the amount of Two
Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00),
each party to bear its own attorneys fees and costs.

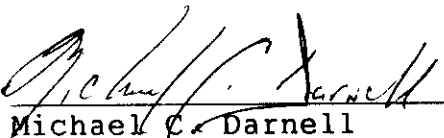
S/ THOMAS F. BRETT

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:



Michael J. Gibbens
Attorney for Dollar Systems, Inc.



Michael C. Darnell
Attorney for Les Matthews

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 07 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DOLLAR SYSTEMS, INC., a Delaware
Corporation,

Plaintiff,

vs.

No. 92-C-1018-B

OBSIDIAN LIVERY, INC., a Louisiana
Corporation, and LES MATTHEWS,
an individual,


Defendants.

ORDER DISMISSING COUNTERCLAIMS WITH PREJUDICE

Pursuant to Rule 41(A)(1)(ii) of the Federal Rules of Civil Procedure and upon the agreement and stipulation of the parties, the Court hereby dismisses with prejudice all counterclaims asserted in this action by Defendants and Counterclaimants, Obsidian Livery, Inc. and Les Matthews. Each party shall bear its own attorneys fees and costs.

CLAUDE E. SPUR
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:


Michael J. Gibbens
Attorney for Dollar Systems, Inc.


Michael C. Darnell
Attorney for Les Matthews

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 05 1994

THE UNITED STATES OF AMERICA

Plaintiff,

-VS-

ORA L. KIRBY, et al.

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-322 B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day of Jan., 1994. The plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendant, State of Oklahoma, ex rel Oklahoma Tax Commission appears by Kim D. Ashley, Assistant General Counsel; the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney; the defendant, Ora L. Kirby and the defendant, Sharron A. Johnson, appear not, but make default; and the defendant, Timothy Johnson should be dismissed from this action.

The Court, being fully advised and having examined the file, finds as follows:

1. (a) The defendant, Ora L. Kirby, acknowledged receipt of a summons and complaint on April 20, 1993; but has failed to otherwise appear and is now in default;

(b) the defendant, **Sharron A. Johnson**, was personally served with process in this case by the U.S. Marshals Service on July 9, 1993, but has failed to otherwise appear and is now in default;

(c) the defendant, **Timothy Johnson**, was made a party to this lawsuit by mistake and should be dismissed.

(g) All other defendants, namely: **The State of Oklahoma, ex rel. Oklahoma Tax Commission, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma**; filed timely answers and have approved the form of this judgment as evidenced by their attorney's subscription.

2. This Court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note which was secured by a mortgage covering land located with the Northern Judicial District of Oklahoma.

3. On November 3, 1982, the defendant, Ora L. Kirby, executed and delivered to Realbanc, Inc. a promissory note in the amount of \$28,850.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent per annum.

4. As security for the payment of the above described note, the defendant, Ora L. Kirby, executed and delivered to Realbanc, Inc. a real estate mortgage dated November 3, 1982, covering the following described property:

Lot Thirty-two (32), Block Forty-two (42), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa,

Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Such tract is referred to herein as "the Property." This mortgage was recorded with the Tulsa County Clerk November 10, 1982, in book 4649 at page 1343. The mortgage tax due thereon was paid.

5. On August 24, 1987, FirstTier Mortgage Co., f/k/a Realbanc, Inc. assigned such promissory note and the mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns, by an instrument recorded with the Tulsa County Clerk August 27, 1987, in book 5048 at page 958.

6. On November 19, 1986, Ora L. Kirby, granted a general warranty deed to the defendant, Sharron A. Johnson. This deed was recorded with the Tulsa County Clerk November 19, 1986, in book 4983 at page 2263. On July 12, 1993, subsequent to the filing of this lawsuit, the defendant, Sharron A. Johnson, a single person, conveyed all of her right, title and interest in and to the Property to the defendant, Ora L. Kirby, via a general warranty deed recorded with the Tulsa County Clerk July 12, 1993, in book 5521 at page 1231.

7. The defendant, Ora L. Kirby, has defaulted under the terms of the note and mortgage due to her failure to pay installments when due. Because of such default the defendant, Ora L. Kirby, is indebted to the plaintiff in the amount of \$48,474.68, plus interest at the rate of twelve and one-half percent per annum from April 5, 1993, until the date of this

judgment, plus interest thereafter at the legal rate until fully paid; plus the costs of this action in the amount of \$420.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

8. The defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission filed its answer herein claiming an interest in and to the Property by virtue of a tax lien; however, the unpaid tax was due from Sharron T. Johnson and Timothy Johnson, then husband and wife, and neither of such individuals have ever owned an interest in or to the Property.

9. The defendant, Tulsa County Treasurer, and the defendant, Board of Tulsa County Commissioners claim no right, title or interest in or to the Property.

10. Pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendant, Ora L. Kirby, in the principal sum of \$48,474.68, plus interest at the rate of twelve and one-half percent per annum from April 5, 1993, until judgment, plus interest thereafter at the legal rate of 3.61 % until paid, plus the costs of this action in the amount of \$428.00, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the

plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED that the defendant, Sharron A. Johnson, has no right title or interest in and to the Property.

IT IS FURTHER ORDERED that the defendant, Timothy Johnson, is hereby dismissed from this action.

IT IS FURTHER ORDERED that the defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, has no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that the defendant, County Treasurer, Tulsa County, Oklahoma, and the defendant, Board of County Commissioners, Tulsa County, Oklahoma, have no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that upon the failure of the defendant, Ora L. Kirby, to satisfy the money judgment of the plaintiff herein within ten days, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell the Property, according to plaintiff's election with or without appraisal and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action incurred by the plaintiff, including the costs of sale of the Property;

Second:

In payment of the judgment rendered
herein in favor of the plaintiff;

Third:

The surplus from said sale, if any, shall
be deposited with the Clerk of the Court
to await further Order of the Court.

IT IS FURTHER ORDERED that the factual findings of
paragraphs 1 through 10, above, are made a part of the order
and decree of this Court.

IT IS FURTHER ORDERED that there shall be no right of
redemption (including in all instances any right to possession
based upon any right of redemption) in the mortgagor or any
other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED that from and after the sale of the
Property, under and by virtue of this judgment and decree, all
of the defendants and all persons claiming under them shall be
forever barred and foreclosed of any right, title, interest or
claim in or to the subject real property or any part thereof.

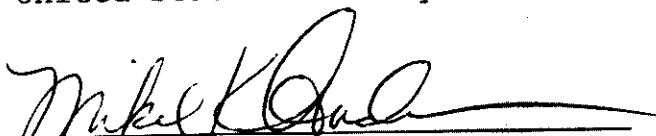
S/ THOMAS R. BLATT

UNITED STATES DISTRICT JUDGE

USA vs. ORA L. Kirby
USDC # 93 C 322 B
Judgment of Foreclosure

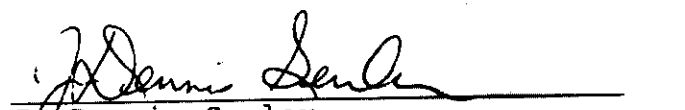
APPROVED:

Stephen C. Lewis
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Kim D. Ashley
Assistant General Counsel
State of Oklahoma, ex rel.
Oklahoma Tax Commission



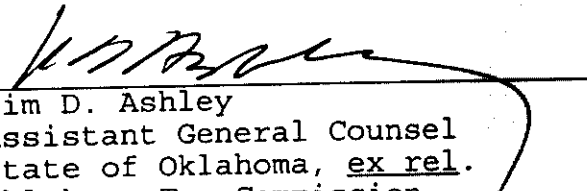
J. Dennis Semler
Assistant District Attorney
Attorney for the defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

USA vs. ORA L. Kirby
USDC # 93 C 322 B
Judgment of Foreclosure

APPROVED:

Stephen C. Lewis
United States Attorney

Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



Kim D. Ashley
Assistant General Counsel
State of Oklahoma, ex rel.
Oklahoma Tax Commission

J. Dennis Semler
Assistant District Attorney
Attorney for the defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

1/10/94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BESSIE LAYTON, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF TOMMY LAYTON, DECEASED,

Plaintiff,

vs.

No. 92-C-66-B ✓

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MAYES AND
SHERIFF WILEY BACKWATER,

Defendants.

J U D G M E N T

In keeping with the verdict of the jury accepted and filed by the Court this date, Judgment is hereby entered in favor of the Plaintiff, Bessie Layton, personal representative of the Estate of Tommy Layton, Deceased, in the total sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), against the Defendants, Board of County Commissioners of Mayes County, Oklahoma, and Sheriff Wiley Backwater, in his official capacity; said sum is to be allocated to the following heirs of Tommy Layton, Deceased, as provided:

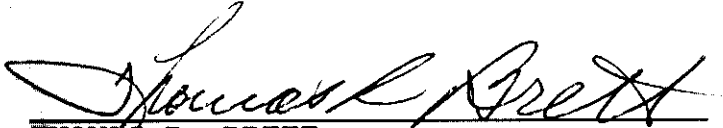
- | | |
|---|--------------------|
| 1. Bessie Layton, as surviving mother of Tommy Lee Layton, Deceased | \$50,000.00 |
| 2. Joshua Lee Layton, surviving minor son of Tommy Lee Layton, Deceased | \$75,000.00 |
| 3. Rachel Lynn Layton, surviving minor daughter of Tommy Lee Layton, Deceased | \$75,000.00 |
| 4. Bessie Layton, as the personal representative of the Estate of Tommy Layton, Deceased, for funeral expenses and pain and suffering | <u>\$50,000.00</u> |
| TOTAL | \$250,000.00 |

Further, interest at the rate of 3.61% per annum from this

date is assessed on said total amount. The Plaintiff is awarded costs of this action against said Defendants, as well as attorneys fees if timely applied for pursuant to Local Rule 54.1 and 54.2.

Relative to the judgment above awarded to the minor children, Joshua Lee Layton and Rachel Lynn Layton, Plaintiff's counsel is hereby directed to comply with the provisions of Okla. Stat. tit. 12, § 83, concerning Oklahoma state court oversight. supervision and spending of said sums.

DATED this 5th day of January, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED IN COURT
DATE JAN 10 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)

v.)

Civil Action No. 93-C-862-B

GOOD CENTS, INC., a foreign)
corporation; M&S ENTERPRISES,)
INC., a foreign corporation;)
DR. DAVID H. STEINER, an)
individual; STEPHEN R. FARRELL,)
an individual; and MICHAEL W.)
SHENKS, an individual,)
)
Defendants.)

FILED

JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This matter comes before the Court upon Motion and Affidavit of the Plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), duly made for entry of Judgment by default. Having considered the evidence and the arguments of counsel, the Court makes the following findings:

1. On September 2, 1993, Thrifty filed a Complaint against Defendants, M&S Enterprises, Inc. ("M&S") and Michael W. Shenks ("Shenks"), along with other defendants.

2. The Summons and Complaint were served upon Defendants, M&S and Shenks, on September 20, 1993. The Returns of Service were filed on September 27, 1993.

3. Defendants, M&S and Shenks, have neither formally entered an appearance in this matter nor filed an answer to Plaintiff's Complaint. Defendants, M&S and Shenks, are thus in default, and

Plaintiff is entitled to a Default Judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

4. The Defendants, M&S and Shenks, are indebted to Plaintiff, jointly and severally, in the sum of \$12,801.74 for failure to pay certain obligations pursuant to lease orders.

5. The Defendant, Shenks, is further indebted to Plaintiff in the sum of \$44,023.31 for failure to pay certain obligations pursuant to written contracts.

6. The Master Lease Agreement which comprises the majority of Thrifty's claims against these Defendants provides that Thrifty shall recover its attorney's fees incurred herein.

7. The remainder of the claim is for recovery on an open account and Plaintiff is entitled to attorney's fees pursuant to 12 O.S. § 936.

8. The Plaintiff has incurred \$304.48 in costs and \$2,150.00 in attorney's fees in the prosecution of claims against M&S and Shenks, all of which the Court finds were reasonably and necessarily incurred in the prosecution of this case, and for all of which Plaintiff is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment is entered in favor of Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendants, M&S Enterprises, Inc. and Michael W. Shenks, jointly and severally, in the amount of \$12,801.74, together with the costs of this action in the amount of \$304.48, and a reasonable attorney's fee in the amount of \$2,500.00, making

a total Judgment of \$15,606.22, for all of which execution shall issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment is entered in favor of Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendant, Michael W. Shenks, individually, in the additional amount of \$44,023.31, for all of which execution shall issue.

Interest shall accrue on this Judgment at the rate of 3.61% per year.

Judgment rendered this 5th day of January, 1994.

S/ THOMAS R. BRETT

United States District Judge

JAN 10 1994
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 06 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HCG ENERGY CORPORATION,
Plaintiff,

v.

ARKLA ENERGY RESOURCES,
Defendant.

Case No. 92-C-745-B

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action is settled and the settlement agreement is being reduced to writing. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown by any of the parties that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the attorney for defendant serve copies of this order by United States mail upon the attorneys for the plaintiff in this action.

DATED January 16th, 1994.

[Signature]

United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA

Plaintiff,

-VS-

ORA L. KIRBY, et al.

Defendants.

Case No. 93-C-322 B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day of Jan., 1994, ~~1993~~. The plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendant, State of Oklahoma, ex rel Oklahoma Tax Commission appears by Kim D. Ashley, Assistant General Counsel; the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney; the defendant, Ora L. Kirby and the defendant, Sharron A. Johnson, appear not, but make default; and the defendant, Timothy Johnson should be dismissed from this action.

The Court, being fully advised and having examined the file, finds as follows:

1. (a) The defendant, Ora L. Kirby, acknowledged receipt of a summons and complaint on April 20, 1993; but has failed to otherwise appear and is now in default;

(b) the defendant, **Sharron A. Johnson**, was personally served with process in this case by the U.S. Marshals Service on July 9, 1993, but has failed to otherwise appear and is now in default;

(c) the defendant, **Timothy Johnson**, was made a party to this lawsuit by mistake and should be dismissed.

(g) All other defendants, namely: **The State of Oklahoma, ex rel. Oklahoma Tax Commission, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma**; filed timely answers and have approved the form of this judgment as evidenced by their attorney's subscription.

2. This Court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note which was secured by a mortgage covering land located with the Northern Judicial District of Oklahoma.

3. On November 3, 1982, the defendant, Ora L. Kirby, executed and delivered to Realbanc, Inc. a promissory note in the amount of \$28,850.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent per annum.

4. As security for the payment of the above described note, the defendant, Ora L. Kirby, executed and delivered to Realbanc, Inc. a real estate mortgage dated November 3, 1982, covering the following described property:

Lot Thirty-two (32), Block Forty-two (42), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa,

Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Such tract is referred to herein as "the Property." This mortgage was recorded with the Tulsa County Clerk November 10, 1982, in book 4649 at page 1343. The mortgage tax due thereon was paid.

5. On August 24, 1987, FirstTier Mortgage Co., f/k/a Realbanc, Inc. assigned such promissory note and the mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns, by an instrument recorded with the Tulsa County Clerk August 27, 1987, in book 5048 at page 958.

6. On November 19, 1986, Ora L. Kirby, granted a general warranty deed to the defendant, Sharron A. Johnson. This deed was recorded with the Tulsa County Clerk November 19, 1986, in book 4983 at page 2263. On July 12, 1993, subsequent to the filing of this lawsuit, the defendant, Sharron A. Johnson, a single person, conveyed all of her right, title and interest in and to the Property to the defendant, Ora L. Kirby, via a general warranty deed recorded with the Tulsa County Clerk July 12, 1993, in book 5521 at page 1231.

7. The defendant, Ora L. Kirby, has defaulted under the terms of the note and mortgage due to her failure to pay installments when due. Because of such default the defendant, Ora L. Kirby, is indebted to the plaintiff in the amount of \$48,474.68, plus interest at the rate of twelve and one-half percent per annum from April 5, 1993, until the date of this

judgment, plus interest thereafter at the legal rate until fully paid; plus the costs of this action in the amount of \$420.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

8. The defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission filed its answer herein claiming an interest in and to the Property by virtue of a tax lien; however, the unpaid tax was due from Sharron T. Johnson and Timothy Johnson, then husband and wife, and neither of such individuals have ever owned an interest in or to the Property.

9. The defendant, Tulsa County Treasurer, and the defendant, Board of Tulsa County Commissioners claim no right, title or interest in or to the Property.

10. Pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendant, Ora L. Kirby, in the principal sum of \$48,474.68, plus interest at the rate of twelve and one-half percent per annum from April 5, 1993, until judgment, plus interest thereafter at the legal rate of 3.61 % until paid, plus the costs of this action in the amount of \$428.00, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the

plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED that the defendant, Sharron A. Johnson, has no right title or interest in and to the Property.

IT IS FURTHER ORDERED that the defendant, Timothy Johnson, is hereby dismissed from this action.

IT IS FURTHER ORDERED that the defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, has no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that the defendant, County Treasurer, Tulsa County, Oklahoma, and the defendant, Board of County Commissioners, Tulsa County, Oklahoma, have no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that upon the failure of the defendant, Ora L. Kirby, to satisfy the money judgment of the plaintiff herein within ten days, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell the Property, according to plaintiff's election with or without appraisement and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action incurred by the plaintiff, including the costs of sale of the Property;

Second:

In payment of the judgment rendered
herein in favor of the plaintiff;

Third:

The surplus from said sale, if any, shall
be deposited with the Clerk of the Court
to await further Order of the Court.

IT IS FURTHER ORDERED that the factual findings of
paragraphs 1 through 10, above, are made a part of the order
and decree of this Court.

IT IS FURTHER ORDERED that there shall be no right of
redemption (including in all instances any right to possession
based upon any right of redemption) in the mortgagor or any
other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED that from and after the sale of the
Property, under and by virtue of this judgment and decree, all
of the defendants and all persons claiming under them shall be
forever barred and foreclosed of any right, title, interest or
claim in or to the subject real property or any part thereof.

S' THOMAS H. BRETT

UNITED STATES DISTRICT JUDGE

USA vs. ORA L. Kirby
USDC # 93 C 322 B
Judgment of Foreclosure


APPROVED:

Stephen C. Lewis
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Kim D. Ashley
Assistant General Counsel
State of Oklahoma, ex rel.
Oklahoma Tax Commission



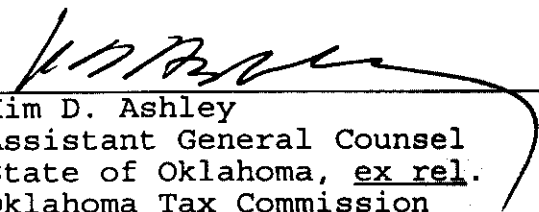
J. Dennis Semler
Assistant District Attorney
Attorney for the defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

USA vs. ORA L. Kirby
USDC # 93 C 322 B
Judgment of Foreclosure

APPROVED:

Stephen C. Lewis
United States Attorney

Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



Kim D. Ashley
Assistant General Counsel
State of Oklahoma, ex rel.
Oklahoma Tax Commission

J. Dennis Semler
Assistant District Attorney
Attorney for the defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

JAN 10 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 06 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JEANNE MARIE DRULEY,
Petitioner,
vs.
JACK COWLEY, et al.,
Respondents.

No. 93-C-759-B ✓

ORDER

Before the Court are Petitioner's motions to "assume original jurisdiction" filed on December 8, 1993, and December 29, 1993, and her December 15, 1993 letter.

On September 3, 1993, the Court dismissed this action sua sponte after granting Petitioner's motion for leave to proceed in forma pauperis. The Court concluded that Petitioner's civil rights allegations lacked an arguable basis in law, and that Petitioner had not exhausted her state remedies regarding numerous of her claims. Petitioner now requests the Court to address the merits of her habeas corpus action as the Tulsa County District Court denied her writ of habeas corpus, and an appeal is presently pending before the Oklahoma Court of Criminal Appeals. Petitioner argues that there remain no available state remedies because her appeal has been pending before the Oklahoma Court of Criminal Appeals for more than forty days.

Because Petitioner requests the Court to address the merits of her habeas corpus action in spite of the September 3, 1993 order of dismissal, the Court construes Petitioner's motion to "assume

original jurisdiction" as a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). The Court will, however, deny Petitioner's motion as untimely. Petitioner did not file the motion within ten days of the September 3, 1993 order of dismissal. See Rule 59(e). Nonetheless, the Court notes that Petitioner has not yet exhausted her state remedies, and her allegations of delay are unsupported at best.

ACCORDINGLY, IT IS HEREBY ORDERED that:

(1) Petitioner's motions to assume original jurisdiction [docket #5 and #7] are **denied**.

SO ORDERED THIS 6th day of Jan, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et.,)
Al.,)
)
Defendants.)

Consolidated
89-C-868-B
89-C-896-B
90-C-859-B

FILED
JAN 05 1994
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER DETERMINING GOOD FAITH OF SETTLEMENT

Now on this 5th day of January, 1994, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO'S) NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ORDERS as follows:

1. The Magistrate's Report and Recommendation pertaining the hearing on March 19, 1993, should be and is approved.
2. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 656) in the above captioned action between the Plaintiff ARCO and

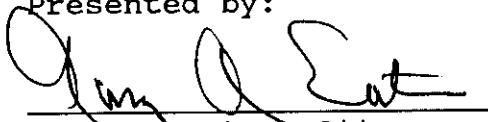
Defendant Bill White GMC Trucks, Inc. is found to have been entered into in good faith, and all claims against Bill White GMC Trucks, Inc. for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlements.

Dated: Jan 5, 1994

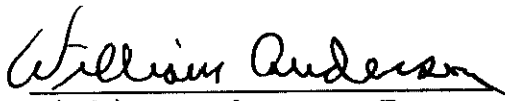
S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court Judge

Presented by:



Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company



William Anderson, Esq.
Liaison Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 05 1994
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et.,)
Al.,)
)
Defendants.)

Consolidated Case

89-C-868-B

89-C-896-B

90-C-859-B

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 5th day of January, 1994, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ADJUDGES, ORDERS and DECREES:

1. The settlements encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 656) in the above captioned action between the Plaintiff ARCO and Defendant Bill White GMC Trucks, Inc. is found to be in good faith, and a final judgment barring all claims against Bill White GMC Trucks, Inc. associated with the Site under state and federal law, except to the extent that such claims are preserved by the

settlement, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against Bill White GMC Trucks, Inc. should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against Bill White GMC Trucks, Inc. pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. Entry into the Agreement by an ineligible entity renders the Agreement null and void. An eligible entity is a generator or transporter, or both, of material to the Site, with a volume of less than or equal to 100,000 gallons.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of Bill White GMC Trucks, Inc.'s representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of his offer to enter the Agreement, renders the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or the Defendant Bill White GMC Trucks, Inc. with respect to claims which are preserved by the settlements.

9. There being no just reason to delay the entry of this Judgment, this Court hereby directs entry of a Final Judgment and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Jan 5, 1994

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court Judge

Presented by:

Gary A. Eaton
Gary A. Eaton, Attorney
for Plaintiff, Atlantic
Richfield Company

William Anderson
William Anderson, Esq.
Liaison Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)	Consolidated Case No.
)	
Plaintiff,)	89 C 868 B
)	89 C 896 B
v.)	90 C 859 B
)	
AMERICAN AIRLINES, INC., et al.,)	
)	
Defendants.)	

ORDER DETERMINING GOOD FAITH OF SETTLEMENT

Now on this 5th day of January, 1994 this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (Docket No. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appear by their respective lead counsel, and William Anderson appears as liaison counsel. The court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ORDERS as follows:

1. The Magistrate's Report and Recommendation pertaining to the hearing on March 19, 1993, should be and is approved.

2. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (Docket No. 656) in the above captioned action between the

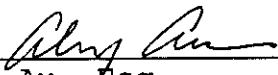
Plaintiff ARCO and Defendant Cox Motor Company is found to have been entered into in good faith, and all claims against Cox Motor Company for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlements.

Dated: ~~December~~ ^{Jan.} 5th, 1994.


S/ THOMAS R. BRETT

~~John Leo Wagner~~ ^{THOMAS R. BRETT}
United States ~~Magistrate~~ Judge
DISTRICT

Presented by:



Alan Au, Esq.
Attorney for Plaintiff,
Atlantic Richfield Company



William Anderson, Esq.
Liaison Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)	Consolidated Case Nos.
)	
Plaintiff,)	89 C 868 B
)	89 C 896 B
v.)	90 C 859 B
)	
AMERICAN AIRLINES, INC., et al.,)	
)	
Defendants.)	

FILED

JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 5th day of Jan, 1994, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (Docket No. 656) filed herein on March 4, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, the Defendants appear by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ADJUDGES, ORDERS and DECREES:

1. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (Docket No. 656) in the above captioned action between the Plaintiff ARCO and Defendant Cox Motor Company ("Cox Motor") is found to be in good faith, and a final judgment barring all claims against Cox Motor associated with the Site under state and federal

law, except to the extent that such claims are preserved by the settlement, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against Cox Motor should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against Cox Motor pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. Entry into the Agreement by an ineligible entity renders the Agreement null and void. An eligible entity is a generator or transporter, or both, of material to the Site, with a volume of less than or equal to 100,000 gallons.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of Cox Motor's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of its offer to enter the Agreement, renders the Agreement null and void.

7. In the event that the Agreement is or becomes

null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or the Defendant Cox Motor with respect to claims which are preserved by the settlements.

Dated: Jan 5 ~~December~~ __, 1993

SI THOMAS R. BRETT

~~John Leo Wagner~~ THOMAS R. BRETT
United States Magistrate Judge
District

Presented by:

Alan Au
Alan Au, Esq.
Attorney for Plaintiff,
Atlantic Richfield Company

William Anderson
William Anderson, Esq.
Liaison Counsel

DATE JAN 8 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KIRK W. LEMMON

Plaintiff,

vs.

Case No. 90-C-697-B ✓

JOHN WESLEY JOHNSON, Individually,
and/or as a Police Officer;
DEPUTY THOMPSON, Individually and
as a Police Officer; SHERIFF
STANLEY GLANZ and CITY OF TULSA
and COUNTY OF TULSA and DOES
I-X, INCLUSIVE,

Defendants.

FILED
JAN 5 1994
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ORDER

Now before the Court are the Motions for Summary Judgment of Defendant Tulsa County (Tulsa County) (docket #40) and Defendant Stanley Glanz (Glanz) (docket #42).

Undisputed Facts

Plaintiff Kirk Lemmon (Lemmon) was arrested by Tulsa Police Officers on November 1, 1989, for driving under the influence, and was booked into the Tulsa County Jail at approximately 4:00 a.m. Plaintiff contends that, while in the Tulsa County Jail, deputy jailer John Wesley Johnson (Johnson), while acting under color of law, used an excessive and unnecessary amount of force on him causing facial and back injuries. Plaintiff was then released from the Tulsa County Jail at approximately 9:20 a.m. on November 1, 1989.

Lemmon then brought this 42 U.S.C. §1983 claim against

154

Johnson, Glanz, and Tulsa County¹ for violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution. Lemmon also asserts pendent state claims for assault and battery, intentional infliction of emotional distress and negligence against these defendants.² Lemmon asserted a claim against Glanz and Tulsa County under §1983 for their "deliberate indifference to Plaintiff's constitutional rights." Tulsa County moved for summary judgment alleging that it had not been properly sued and that it had immunity under the Oklahoma Governmental Tort Claims Act. Glanz moved for summary judgment on the §1983 claim, asserting that there was no evidence to support the allegation of a custom or policy allowing the abuse of prisoners, or failure to train or supervise Johnson; that Glanz should be granted qualified immunity; and that the Oklahoma Governmental Tort Claims Act provides immunity for certain of Lemmon's claims.

Legal Analysis

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that

¹ Lemmon originally brought suit against additional defendants, but all defendants except Glanz, Tulsa County, and Johnson have been dismissed.

² Plaintiff originally included claims in his complaint for violation of his rights under the First, Fifth, Eighth and Ninth Amendments to the United States Constitution as well as claims for false arrest, false imprisonment, malicious prosecution, and gross negligence. Glanz states in his Amendment to his Brief in Support of Motion for Summary Judgment that Plaintiff's counsel has informed Defendants that he does not intend to pursue these claims. Lemmon admits this fact in his objection to Glanz's Motion for Summary Judgment.

the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Tulsa County's Motion

Tulsa County moves for summary judgment, arguing that Plaintiffs suit, in order to be against the county, must be brought against the "Board of County Commissioners of the County of" Tulsa. Okla.Stat.tit. 19, §4. While Tulsa County's argument is well taken, it is mooted by the fact that Lemmon has sued Glanz in his official capacity.

Official-capacity suits, in contrast, 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' (citation omitted) As long as the government entity receives notice and an opportunity to respond, an official capacity suit, is, in all respects other than name, to be treated as a suit against the entity. (citation omitted)

Kentucky v. Graham, 473 U.S.159, 165-166 (1985). Accordingly, the Court dismisses Plaintiff's action against Tulsa County, because it was not properly named. Notwithstanding, the Court recognizes this action as one brought by Plaintiff against the county because of the official-capacity claims lodged against Glanz.

Glanz' Motion

It is undisputed that Plaintiff does not make a claim against Glanz in his personal capacity.³ An official-capacity suit is not against the official personally, "for the real party in interest is the entity" Graham, at 166. A governmental entity is not liable merely because it employs a tortfeasor, on a respondeat superior basis. Monell v. New York City Department of Social Services, 436 U.S. 658, 691 (1977). A governmental entity, however, is liable when "execution of a government's policy or custom . . . inflicts the injury . . ." Id. at 694. In essence, the custom or policy must be the "moving force" behind the violation. Id.

A "custom" sufficient to confer liability on a government entity has been described:

Without having been directly authorized, or tacitly encouraged, or inadequately trained in specific ways by responsible municipal policymakers, police officers, like other public employees, may fall into patterns of unconstitutional conduct in their encounters with suspects, arrestees, persons in custody and others involved in law enforcement situations. This may result from a variety of factors not sufficiently traceable in origin to any fault of municipal policymakers to warrant

³ Glanz states, in his Amendment to Brief in Support of his Motion for Summary Judgment, and Lemmon admits in his Objection to Glanz's Motion for Summary Judgment, that "Plaintiff is currently pursuing this action against Defendant Glanz in his official capacity only."

treating the conduct as a reflection of "municipal policy" in the Monell sense.

Spell v. McDaniel, 824 F.2d 1380, 1390 (4th Cir. 1987). Custom, in order to be actionable, requires: 1) actual or constructive knowledge by policymakers, and 2) failure, as a matter of specific intent or deliberate indifference, to stop the practice. Id. at 1391. A sheriff is officially liable under §1983 if he knew or should have known of the misconduct and failed to stop it. Anthony v. Baker, 767 F.2d 657, 666 (10th Cir. 1985); Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988).

In moving for summary judgment, Glanz argues that there is no policy of allowing the use of unreasonable force by a jailer, and that Plaintiff has listed no witness who will testify to the contrary. Glanz also submits affidavits to the effect that he did not know or have reason to know of any tendencies toward violence on the part of Johnson. However there is evidence that some jailers were routinely abusive and that Johnson was one of those jailers. (Deposition of Sarah Pittard, p. 25.) The fact that previous abuse of prisoners by Johnson was not as severe as in this case is irrelevant. Questions of fact exist as to whether Glanz knew or should have known of these tendencies allegedly witnessed by the jail nurse, and whether he was deliberately indifferent to this knowledge.

Moreover, qualified immunity does not bar Plaintiff's suit against Glanz, regardless of whether Glanz' conduct was in good faith. As noted above, it is agreed by the parties that Plaintiff's claim against Glanz is in his official capacity only.

"When it comes to defenses to liability, an official in a personal-capacity action may, depending on his position, be able to assert personal immunity defenses, such as objectively reasonable reliance on existing law. (citations omitted) In an official capacity action, these defenses are unavailable. (citations omitted)." Graham, 473 U.S. at 166-167.

Lastly, Glanz claims he, in his official capacity, is immune, and summary judgment is appropriate as to all of the pendent state claims because of the Oklahoma Governmental Tort Claims Act, Okla.Stat.tit. 51, §155(3). That section provides:

The state or a political subdivision shall not be liable if a loss or claim results from:

23. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections.

The Oklahoma Supreme Court, in Medina v State of Oklahoma, et al., 64 O.B.J. 2872, --- P.2d --- (1993) held that the purpose of this provision was to "preserve sovereign immunity against claims of loss resulting from operational level actions by state officers or employees at a penal institution." In Medina, the court held that §155(23) protected the state against liability for the dispensing of medication at a correctional facility, because the dispensing of medicine to an inmate is a "function performed in the operation of the institution" Id. at 2873. The Medina court referred to the "myriad of actions...at the operational level" that would be protected from liability under §155(23). Id. at 2874.

Under this broad interpretation, the exception of §155(23)

is clearly applicable to the operational function of a jailer removing a prisoner from a cell. Thus, under §155(23), Glanz in his official capacity (the county) has no liability for the pendent state claims against Johnson.

Summary Judgment in favor of Glanz, in his official capacity, is denied on Lemmon's §1983 claims, and granted on Lemmon's pendent state claims.

IT IS SO ORDERED THIS 5th DAY OF JANUARY, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ON DOCKET
JAN 7 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 6 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

EAST CENTRAL OKLAHOMA ELECTRIC)
COOPERATIVE,)

Creditor,)

v.)

CREEK COUNTY WELL SERVICE, INC.,)

Debtor in Possession.)

93-C-0819-E /

ORDER AND FINAL JUDGMENT

Final judgment in this action is entered following East Central Oklahoma Electric Cooperative' Motion for Entry of Final Judgment (docket #27), filed October 22, 1993 following jury trial. At trial the jury **determined** East Central Electric Cooperative's degree of negligence to be 25%; while Creek County Well Service, Inc.'s degree of negligence to be 75%. The question now posed is **straightforward**: Given the jury's assessment of negligence, how much money is Creek County Well Service, Inc. actually liable to pay?

The question must initially be **answered** by looking to the amounts of money paid by East Central Electric Cooperative, **which** it now claims are subject to being re-paid according to the proportion of **liability** determined by the jury. East Central Electric Cooperative claims the following amounts:

\$4,026,633.00
\$ 616,376.85
\$ 500,000.00
\$ 42,050.00
\$ 211,439.89

Amount paid to Johnson claimants
Interest from date of payment (from 12/6/91)
Amount paid to Wessel claimants
Interest from date of payment (01/08/93) to (10/15/93)
Attorneys fees incurred defending Johnson & Wessel
Claims (through 01/08/93 - Wessel payment date).

\$ 32,778.93	Attorney fees for instant action through 10/18/93.
\$5,429,278.67	Total
\$4,071,959.00	75% of Total (per jury verdict).

The question then becomes, of the amounts claimed, to what is East Central Electric Cooperative actually entitled? The answer lies in analysis of the governing statute by which liability is apportioned: Title 63 Okla. Stat. § 984.

Title 63 Okla. Stat. § 984, otherwise called the "Six-Foot Rule," reads in part:

If such violation [of section 981] results in physical or electrical contact with any overhead high voltage line or conduct, the person, firm, corporation or association violating the provisions of this act, shall be liable to the owner or operator of such high voltage line or conductor for all damage to such facilities and for all liability incurred by such owner or operator as a result of any such accidental contact.

The Tenth Circuit, construing the statutory *schema* of §984 in relation to Oklahoma comparative negligence and contribution statutes requiring contribution among joint tortfeasors, stated:

On the question of the statute's asserted incongruence with the more recently adopted comparative negligence and contribution statute, the legislature provided, in enacting the latter statute, that "[t]his act does not impair any right of indemnity from another, the right of indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation." Okla.Stat. Ann. tit. 12 § 832(F) (West Supp. 1984). Since it is undisputed that section 984 provides that the utility company is entitled to indemnity for all liability incurred as a result of the violation of the Act, if and to the extent section 984 applies in this case, it does not conflict with the contribution statute, and Robert Gordon is not entitled to any contribution from East Central. 772 F.2d 662, 663 (1985).

Section 984 provides that any employer who violates this provision shall be liable to the owner or operator of the high voltage line "for all liability incurred by such owner or operator as a result of any such accidental contact." *Id.* The court rejected an interpretation of §984 which would, in light of the adoption of statutes implementing

contribution among joint tortfeasors, work "a shift in the basic framework of its tort law."

Id.

Thus, the question becomes not **whether** Well Service is entitled to a determination of the amount of damages, but to **what extent** did its agent/employee contribute to the liability ultimately (and already) **imposed** on the utility. A plain reading of the statute provides that the utility company is **entitled** to be indemnified ("paid back") for "all liability" attributable to the actions or conduct of the employer whose employee was injured (in this case, electrocuted). **Liability** as between the employee and the utility is determined either by trial or settlement. **Here**, determination was both by trial (Johnson) and settlement (Wessel).

Apportionment of §§981-984 **indemnification** then becomes a question for yet a further determination as between the **utility** and the employer. The employer is only liable to the extent its violation of the **requisites** of §981 contributed to the liability incurred by the utility. *See, Travelers Insurance v. L.V. French*, 770 P.2d 551, 553-555 (Okla. 1988).

Here, trial has resulted in a **jury determination** that the employer, Creek County Well Service, Inc. was 75% liable for **the damages** suffered by its employees. Resolution of the issues thus framed is as follows.

\$4,026,633.00 - The Amount Paid to the Johnson Claimants

East Central Oklahoma Electric Cooperative, having paid the sum of \$4,026,633.00 to the Johnson claimants is entitled to **be indemnified** for 75% of this sum in accordance with Oklahoma's statutory scheme, **set forth** above (*the "six-foot rule"*).

\$ 616,376.85 - Interest from the Date of Payment (from 12/6/91) on Johnson Payment

East Central Oklahoma Electric Cooperative claims entitlement to interest on the monies it paid for which it is entitled to reimbursement. This issue raises a question of the scope of the term in §984, "all liability incurred". Does the term "all liability incurred" include such amounts as interest accruing on amounts paid, later to be re-paid as part of the indemnity scheme? The answer is found in *Travelers Insurance Company v. L.V. French Truck Service, Inc.*, 770 P.2d 551 (Okl. 1988). The court held:

[W]e disagree with French's view of § 984 and conclude...that the legislature must have intended the phrase "liability incurred" to mean "loss"...In short, the phrase "liability incurred," as used in § 984, is synonymous with "loss".

The rationale underlying an interpretation consistent with that of *Travelers* is set forth in the Texas case, *Olson v. Central Power and Light Company*, 803 S.W.2d 808, 814 (Ct.App.Tx. 1991). The court, applying a similar statute providing for indemnity for "all liability incurred" held:

The purpose of indemnity is to make a party whole, and if the indemnitee must bear the expense of defending a suit, then he is not made whole by the indemnification...We conclude the indemnification for "all liability"...includes attorney's fees, costs, and interest.

East Central Oklahoma Electric Cooperative cannot be said to be made whole in the spirit and application of § 984 unless it is proportionally re-paid for the interest accruing on monies paid on behalf of the employer, Creek County Well Service. Accordingly, 75% of the sum of **\$616,376.85** (plus interest accruing to the present time) is allowed to be recovered against Creek County Well Service, Inc. (the sum of \$616,376.85 being calculated as set forth in East Central Oklahoma Electric Cooperative's Motion for Entry of Final Judgment).

\$500,000.00 - Amount Paid to the Wessel Claimants

East Central Oklahoma Electric Cooperative, having paid the sum of \$500,000.00 to the Wessel claimants is entitled to be indemnified for 75% of this sum in accordance with Oklahoma's statutory scheme, set forth above (*the "six-foot rule"*). The fact that this was an agreed settlement raises no issue, as Creek County Well Service, Inc. does not challenge the efficacy or reasonableness of the settlement.

\$42,050.00 - Interest from Date of Payment (01/08/93) to (10/15/93) On Wessel Settlement

As above, East Central Oklahoma Electric Cooperative claims entitlement to interest on the monies it paid for which it is entitled to reimbursement. Applying the same reasoning, as above, the undersigned finds that East Central Oklahoma Electric Cooperative is entitled to be paid 75% of \$42,050.00 (plus interest accruing from 10/15/93 to the present time), as being interest from the date the settlement to Wessel was paid to the present.

\$211,439.89 - Attorneys Fees Incurred Defending the Johnson & Wessel Claims

The most controversial of the claims made by East Central Oklahoma Electric Cooperative is that for attorney fees for defense of the Johnson and Wessel claims. Creek County Well Service argues that attorney fees are not recoverable absent specific statutory authorization. It further notes that East Central Oklahoma Electric Cooperative was required to defend and is, in any event, liable for 25% of the damages by reason of the instant jury verdict.

Upon review, the undersigned finds that construction of §984 requires indemnity for all loss suffered (*"all liability incurred"*). Borrowing from the jurisprudence of qualified

immunity, it is well-settled that participation in litigation and discovery part of litigation is itself a burden; hence the construction under that jurisprudence of the concept of "immunity from suit". See, e.g., Mitchell v. Forsyth, 472 U.S. 511, 526 (1985); Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982); Lewis v. Fort Collins, et al, 903 F.2d 752 (10th Cir. 1990). Recognizing this "fact" of judicial dispute resolution in one venue, it is inconsistent not to apply the same thinking to this venue. It is understood by all who have the fortune (or not) to participate as litigants that the process is difficult, time-consuming and above-all, costly. To find, as a matter of fact and law, that a litigant is only responsible for 25% of the loss, while another is responsible for 75% of the loss, but not include as part of that apportionment the costs associated with such loss, is to ignore the very real practicalities of participation in adversarial dispute resolution -- and this is particularly so where, as here, Creek County Well Service, Inc. expended virtually no fees in defense of the Johnson or Wessel claims.

Thus, resolution of the question of indemnification for attorneys' fees is a determination based upon the unique circumstances of this case, as applied to the law. Here, the fact that East Central Oklahoma Electric Cooperative was the sole litigant in the State court jury trial and otherwise solely negotiated settlement with Wessel, means, as a practical matter, that it alone is "out" considerable legal expense. This expense, as litigation in this court now shows, should have been reasonably borne by Creek County Well Service, Inc. the party now determined to be 75% liable for the injuries suffered by its employees.

Accordingly, the undersigned finds that "all liability incurred" means "all loss

incurred" (*Travelers Insurance Company v. L.V. French Truck Service, Inc.*, 770 P.2d 551 (Okla. 1988)), and such loss reasonably includes 75% of the legal fees spent in defense of the Johnson and Wessel claims, as set forth in Exhibit "B" to East Central Oklahoma Electric Cooperative's Motion for Final Judgment.

\$32,778.93 - Attorney Fees for the Instant Action Through 10/18/93

A different question arises, however, when considering apportionment of attorneys' fees spent in the instant litigation. Consistent interpretation and application of §984 requires that fees incurred in determining the apportionment of liability between the employer and the utility, as here, are not proper subject of indemnification. Application of §984, as required by East Central Oklahoma Electric Cooperative, would, if done consistently, mandate division of two different sets of fees -- those of East Central Oklahoma Electric Cooperative and Creek County Well Service, Inc.

Specifically, while East Central Oklahoma Electric Cooperative asks that \$32,778.93 be divided such that 75% of the fee be apportioned to Creek County Well Service, Inc., it ignores the fact that it has been held to be 25% responsible for the resultant injuries. To avoid a fee shifting which is all but akin to that given under certain statutes to a prevailing party, East Central Oklahoma Electric Cooperative would be required to pay 25% of Creek County Well Service, Inc.'s fees (undisclosed) and Creek County Well Service, Inc. would have to pay 75% of East Central Oklahoma Electric Cooperative's fees.

This is not the intention of §984, as indicated by pertinent case law.

Section 984 does not create in *some de facto* manner a "prevailing party" fee shifting under the guise of "indemnity"; nor does it create any statutory basis for award of fees to

a so-called prevailing party. Arguably, there is no prevailing party in a strict sense, as the question is one of apportionment of liability for injuries suffered by others.

Instead, consistent interpretation of §984 requires indemnification for "all liability incurred by such owner or operator as a result of any such accidental contact". Litigation expenses associated with judicial determination of the proportion of the parties' respective liability is not a loss "as a result of any such accidental contact". Rather, such expenses are a result of the dispute between the employer and the utility; and as such, are one step removed from the indemnity provisions found at §984.¹

Accordingly, the undersigned finds that East Central Oklahoma Electric Cooperative is not entitled to indemnification for fees spent in adjudicating the proportion of loss suffered between it and Creek County Well Service, Inc.

Total Indemnification

In accord with the foregoing, the undersigned finds that final JUDGMENT should be and hereby is entered in favor of EAST CENTRAL OKLAHOMA ELECTRIC COOPERATIVE and against CREEK COUNTY WELL SERVICE, INC. in the sum of \$4,047,374.80;² said amount being 75% of the liability (loss) incurred, pursuant to §984, by East Central Oklahoma Electric Cooperative as a result of the accidental contact of the

¹ This is consistent with the finding that legal expenses incurred defending the claims of the injured employees are directly or immediately related "as a result of ... [the] ... accidental contact".

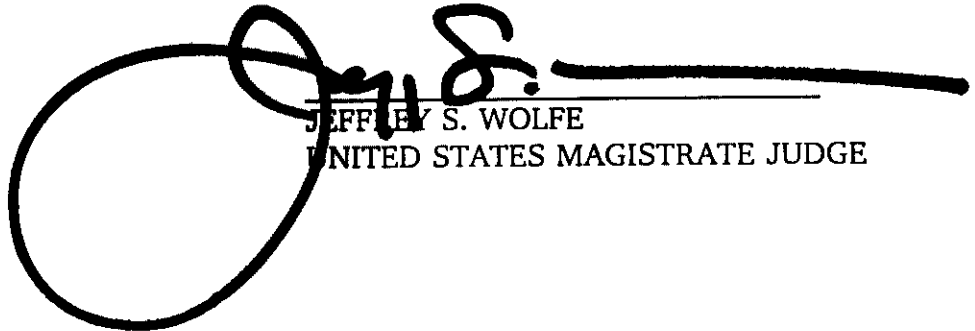
² This amount includes 75% of the following:

\$4,026,633.00
\$ 616,376.85
\$ 500,000.00
\$ 42,050.00
\$ 211,439.89

Amount paid to Johnson claimants
Interest from date of payment (from 12/6/91)
Amount paid to Wessel claimants
Interest from date of payment (01/08/93) to (10/15/93)
Attorneys fees incurred defending Johnson & Wessel
Claims (through 01/08/93 - Wessel payment date).

two Creek County Well Service employees, and for which Creek County Well Service, Inc. has been determined by jury trial to be liable.

SO ORDERED AND JUDGMENT IS SO ENTERED this 6th day of January, 1994.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET
DATE JAN 7 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT ROSTECK
Petitioner,

vs.

RON CHAMPION
Respondent.

No. 94-C-1-E

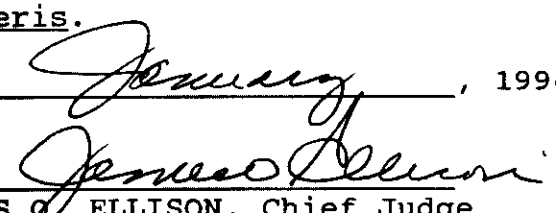
ORDER

Petitioner has filed an application for a writ of habeas corpus, but has not submitted the proper \$5.00 filing fee or a motion for leave to proceed in forma pauperis.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) The petition is **dismissed** without prejudice at this time for failure to pay the filing fee. See Local Rule 5.1(F). The court **may reinstate** this action if Petitioner submits to the court either the proper filing fee or a motion for leave to proceed in forma pauperis within twenty (20) days from the date of entry of this order.
- (2) The Clerk shall **send** Petitioner a blank motion for leave to proceed in forma pauperis.

SO ORDERED THIS 6TH day of January, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED ON DOCKET
JAN. 7 1993

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

RESOLUTION TRUST CORPORATION, as
Conservator for Cimarron Federal
Savings Association,

Plaintiff,

vs.

ANTHAN D. FULLER and JANICE M.
FULLER, husband and wife;
VICTOR W. ADERHOLD; ANGELA B.
BRAUER; QUINTON R. DODD and
VICKIE E. DODD, husband and wife;
LAKELAND REAL ESTATE DEVELOPMENT,
INC.; JAMES M. HENRY and KAREIN
HENRY a/k/a KAREIN L. HENRY,
husband and wife,

Defendants.

JAN 6 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 89-C-755-C

(Consolidated into and
with Case No. 89-C-753-C;
Case No. 89-C-754-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

ORDER ENTERING JUDGMENT FOR ATTORNEY'S FEES

NOW before the Court is the Supplemental Application for Attorney's Fees, filed herein on December 29, 1993, of Plaintiff Resolution Trust Corporation, as Receiver for Cimarron Federal Savings Association (the "RTC/Receiver"). There being no objection thereto, the Court finds that the RTC/Receiver is entitled to recover attorney's fees and expenses in the amounts set forth in its Supplemental Application and that the total fees and expenses awarded herein and in the Agreed Order Granting Application for Attorney's Fees entered on August 24, 1993, be allocated among the Judgment Debtors according to their interest in the mortgaged property.

IT IS THEREFORE ORDERED that in addition to the \$4,108.12 granted in the August 24th Order, the RTC/Receiver is entitled to

recover further attorney's fees and expenses in the amount of \$3,024.52 from Defendants Anthan D. Fuller, Janice M. Fuller, Victor W. Aderhold and Angela B. Brauer and that one-fourth of total fees and expenses of \$7,132.64, or \$1,783.16, shall be added to the amount of the deficiency judgments entered against Anthan D. Fuller and Janice M. Fuller and that one-half of such total, or \$3,566.32, shall be added to the amount of the deficiency judgments entered against Victor W. Aderhold and Angela B. Brauer.

SO ORDERED this 4th day of January, 1994.

(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

Gary R. McSpadden, OBA # 6093
Dana L. Rasure, OBA # 7421
Barbara J. Eden, OBA # 14220
BAKER & HOSTER
800 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Plaintiff
Resolution Trust Corporation
as Receiver for Cimarron
Federal Savings Association

860013.064

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge John F. Nangle
United States District Court
Southern District of Georgia

MEMBERS:
Judge Milton Pollack
United States District Court
Southern District of New York

Judge Robert R. Merhige, Jr.
United States District Court
Eastern District of Virginia

Judge William B. Enright
United States District Court
Southern District of California

Judge Clarence A. Brimmer, Jr.
United States District Court
District of Wyoming

Judge John F. Grady
United States District Court
Northern District of Illinois

Judge Barefoot Sanders
United States District Court
Northern District of Texas

DIRECT REPLY TO:

Patricia D. Howard
Clerk of the Panel
One Columbus Circle, NE
Federal Judiciary Building
Room G-255, North Lobby
Washington, DC 20002

Telephone: [202] 273-2800
FTS: [202] 273-2800

January 3, 1994

RECEIVED

JAN - 7 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Perry Mathis, Clerk
U.S. District Court
140 U.S. Courthouse
1729 5th Avenue North
Birmingham, AL 35203

Re: MDL-926-- In re Silicone Gel Breast Implants Products Liability Litigation

(See Attached Schedule of Actions for CTO-35)

93-C-883-E

Dear Mr. Mathis:

I am enclosing one certified and additional copies of a conditional transfer order filed by the Panel in the above-captioned matter on December 16, 1993. Section 1407 requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred." As stipulated in the Panel's Rule 12, execution of the order has been stayed 15 days to give any party an opportunity to oppose the transfer if they wish to do so. The 15-day period has now elapsed, no opposition was received, and the order is directed to you for filing.

Involved counsel are listed on the attached pages.

Very truly,

Patricia D. Howard
Clerk of the Panel

By Karla Jordan
Deputy Clerk

Attachment

cc: Transferee Judge: Hon. Sam C. Pointer, Jr.
Transferor Judges: (See Attached List)
Transferor Clerks: (See Attached List)

JPML Form 36

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION FILED
Dec. 16, 1993
PATRICIA D. HOWARD CLERK OF THE PANEL

DOCKET NO. 926

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE SILICONE GEL BREAST IMPLANTS PRODUCTS LIABILITY
LITIGATION**

FILED

JAN - 7 1994

(SEE ATTACHED SCHEDULE CTO-35)

**Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

CONDITIONAL TRANSFER ORDER

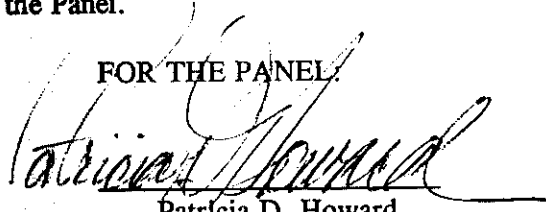
On June 25, 1992, the Panel transferred 78 civil actions to the United States District Court for the Northern District of Alabama for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4100 additional actions have been transferred to the Northern District of Alabama. With the consent of that court, all such actions have been assigned to the Honorable Sam C. Pointer, Jr.

It appears that the actions listed on the attached schedule involve questions of fact which are common to the actions previously transferred to the Northern District of Alabama and assigned to Judge Pointer.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 147 F.R.D. 589, 596, the actions on the attached schedule are hereby transferred under 28 U.S.C. §1407 to the Northern District of Alabama for the reasons stated in the opinion and order of June 25, 1992, (793 F.Supp. 1098) and, with the consent of that court, assigned to the Honorable Sam C. Pointer, Jr.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Northern District of Alabama. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


Patricia D. Howard
Clerk of the Panel

Inasmuch as no objection is pending
at this time, the stay is lifted and
this order becomes effective

JAN 3 1994

Patricia D. Howard
Clerk of the Panel

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION
FILED

Dec. 16, 1993

PATRICIA D. HOWARD
CLERK OF THE PANEL

SCHEDULE CTO-35 — TAG ALONG CASES
DOCKET NO. 926
IN RE SILICONE GEL BREAST IMPLANTS PRODUCTS LIABILITY LITIGATION

<u>DISTRICT</u> <u>DIV</u> <u>CIVIL ACTION#</u>	<u>DISTRICT</u> <u>DIV</u> <u>CIVIL ACTION#</u>	<u>DISTRICT</u> <u>DIV</u> <u>CIVIL ACTION#</u>	<u>DISTRICT</u> <u>DIV</u> <u>CIVIL ACTION#</u>
ARKANSAS EASTERN	FLM 8 93-1933	ILLINOIS CENTRAL	MINNESOTA
ARE 4 93-651	FLM 8 93-1957	ILC 2 93-2269	MN 3 93-763
ARE 4 93-652	FLM 8 93-1972	ILC 2 93-2273	MN 3 93-769
ARE 4 93-655	FLM 8 93-1998		MN 4 93-1071
	FLM 8 93-2004	ILLINOIS NORTHERN	MN 4 93-1072
ARIZONA		ILN 1 93-5364	MN 4 93-1073
AZ 2 93-1893	FLORIDA NORTHERN	ILN 1 93-6036	
AZ 2 93-1926	FLN 3 93-30564	ILN 1 93-6051	MISSOURI EASTERN
AZ 2 93-1946	FLN 3 93-30565	ILN 1 93-6222	MOE 1 93-182
AZ 2 93-2095	FLN 3 93-30584		MOE 4 93-1937
AZ 2 93-2096		ILLINOIS SOUTHERN	
AZ 2 93-2097	FLORIDA SOUTHERN	ILS 3 93-807	MISSOURI WESTERN
AZ 2 93-2098	FLS 1 93-2219		MOW 4 93-869
AZ 2 93-2099	FLS 1 93-2220	INDIANA SOUTHERN	MOW 4 93-953
AZ 2 93-2100	FLS 1 93-2221	INS 1 93-1214	
AZ 2 93-2103	FLS 1 93-2222		MISSISSIPPI SOUTHERN
AZ 2 93-2147	FLS 1 93-2223	KANSAS	MSS 1 93-574
AZ 2 93-2187	FLS 1 93-2224	KS 2 93-2473	MSS 1 93-575
AZ 4 93-573	FLS 1 93-2225	KS 2 93-2474	MSS 1 93-576
	FLS 1 93-2226		MSS 1 93-578
CALIFORNIA CENTRAL	FLS 1 93-2227	KENTUCKY EASTERN	MSS 1 93-579
CAC 2 93-6440	FLS 1 93-2228	KYE 5 93-438	MSS 1 93-581
CAC 2 93-6607	FLS 1 93-2229	KYE 6 93-268	MSS 1 93-582
CAC 8 93-1138	FLS 1 93-2230		MSS 1 93-584
	FLS 1 93-2231	LOUISIANA EASTERN	MSS 2 93-335
CALIFORNIA EASTERN	FLS 1 93-2232	LAE 2 93-3279	MSS 3 93-738
CAE 1 93-5805	FLS 1 93-2233	LAE 2 93-3280	MSS 3 93-739
	FLS 1 93-2271	LAE 2 93-3718	MSS 3 93-740
CALIFORNIA SOUTHERN	FLS 9 93-8528	LAE 2 93-3731	MSS 3 93-741
CAS 3 93-1243	FLS 9 93-8623	LAE 2 93-3743	MSS 5 93-154
CAS 3 93-1268		LAE 2 93-3756	
CAS 3 93-1684	GEORGIA NORTHERN	LAE 2 93-3757	MONTANA
CAS 3 93-1752	GAN 1 93-2327	LAE 2 93-3758	MT 4 93-132
	GAN 1 93-2336	LAE 2 93-3759	MT 4 93-135
COLORADO	GAN 1 93-2341	LAE 2 93-3760	MT 4 93-136
CO 1 93-2216	GAN 1 93-2342	LAE 2 93-3769	
	GAN 1 93-2343	LAE 2 93-3824	NORTH CAROLINA WESTERN
CONNECTICUT		LAE 2 93-3827	NCW 1 93-258
CT 3 93-2257	GEORGIA SOUTHERN	LAE 2 93-3887	
CT 3 93-2297	GAS 4 93-248	LAE 2 93-3888	NORTH DAKOTA
CT 3 93-2300	GAS 4 93-250	LAE 2 93-3889	ND 1 93-150
CT 3 93-2301	GAS 4 93-252	LAE 2 93-3913	
CT 3 93-2302		LAE 2 93-3937	NEBRASKA
CT 3 93-2303	HAWAII		NE 8 93-463
	HI 1 93-890	MASSACHUSETTS	NE 8 93-550
FLORIDA MIDDLE	HI 1 93-919	MA 1 93-11622	
FLM 8 93-1876	HI 1 93-920	MA 1 93-11988	NEW HAMPSHIRE
FLM 8 93-1877	HI 1 93-921	MA 1 93-12043	NH 1 93-616
FLM 8 93-1882	HI 1 93-922		
FLM 8 93-1917			NEW JERSEY
FLM 8 93-1922			NJ 2 93-4474
FLM 8 93-1930			

INVOLVED CLERKS FOR SCHEDULE CTO-35

Fred L. Wilson
P.O. Box 1805
Pittsburgh, PA 15230

Alfred L. Wilson
P.O. Box 1820
Erie, PA 16507

Ann A. Birch
1845 Assembly Street
Columbia, SC 29201

Bruce Rifkin
308 U.S. Courthouse
1010 Fifth Avenue
Seattle, WA 98104

Bruce Rifkin
1717 Pacific Avenue
Room 3100
Tacoma, WA 98402

Carl R. Brents
P.O. Box 869
Little Rock, AR 72203

Carol C. Fitzgerald
300 Las Vegas Boulevard, South
Las Vegas, NV 89101

David L. Edwards
105 U.S. Courthouse
611 North Florida Avenue
Tampa, FL 33602

Don B. Hendrix
940 Front Street
San Diego, CA 92189

Donald Cinnamond
503 Gus J. Solomon
U.S. Courthouse
620 S.W. Main Street
Portland, OR 97205

Donald Cinnamond
102 U.S. Courthouse
211 East 7th Street
Eugene, OR 97401

Doris R. Casey
193 U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Edward J. Klecker
P.O. Box 1193
Bismarck, ND 58502

Francis E. Dosal
708 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Francis E. Dosal
514 U.S. Courthouse
110 South 4th Street
Minneapolis, MN 55401

H. Stuart Cunningham
219 South Dearborn Street
Chicago, IL 60604

Henry R. Crumley, Jr.
P.O. Box 8286
Savannah, GA 31412

J.T. Noblin
245 E. Capitol Street, Suite 416
Jackson, MS 39201

J.T. Noblin
701 Main Street, Suite 200
Hattiesburg, MS 39403

J.T. Noblin
725 Washington Loop, Suite 243
Biloxi, MS 39530

Jack L. Wagner
5408 U.S. Courthouse
1130 O Street
Fresno, CA 93721

James M. Parkison
U.S. Courthouse, Foley Square
New York, NY 10007

James R. Manspeaker
U.S. Courthouse, Room C-145
1929 Stout Street
Denver, CO 80294

James R. Starr
P.O. Box 1498
Concord, NH 03301

John A. O'Neal
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

John M. Waters
P.O. Box 786
Danville, IL 61832

Joyce F. Witt
P.O. Box 1234
Roanoke, VA 24006

Joyce F. Witt
P.O. Box 490
Big Stone Gap, VA 24219

Kenneth J. Murphy
260 U.S. Courthouse
85 Marconi Boulevard
Columbus, OH 43215

Kenneth J. Murphy
326 Courthouse & P.O. Building
5th & Walnut Streets
Cincinnati, OH 45202

Kenneth J. Murphy
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Mid City Station
Dayton, OH 45402

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Los Angeles, CA 90012

J. Cheleotis
301 N. Miami Avenue
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T.G. Cheleotis
701 Clematis Street
W. Palm Beach, FL 33401

Thomas McGraw
309 U.S. Courthouse
100 Otis Street
Asheville, NC 28801

William F. Clayton
220 U.S. Courthouse And
Federal Building
400 South Phillips Avenue
Sioux Falls, SD 57102

Walter A.Y.H. Chinn
P.O. Box 50129
Honolulu, HI 96850

William T. Walsh
U.S. Post Office & Courthouse
P.O. Box 419
Newark, NJ 07101

DATE JAN 0 6 1994

FILED

JAN 05 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

REV. HERBERT LEWIS

Plaintiff,

vs.

JUDGE LAFORTUNE, et al

Defendants.

No. 93-C-1131-B

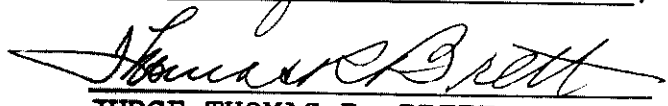
ORDER

Plaintiff has filed a civil rights complaint and motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff's motion for leave to proceed in forma pauperis is insufficient; the financial certificate by an authorized official of the penal institution is not filled out.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) The instant complaint is **dismissed** without prejudice at this time. The Court **may reopen** Plaintiff's action if he submits the \$120.00 filing fee or a properly completed motion for leave to proceed in forma pauperis to the court within thirty (30) days.
- (2) The Clerk shall **return** all summons and service papers to the Plaintiff.

SO ORDERED THIS 5th day of Jan, 1994.


JUDGE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED ON DOCKET
JAN 6 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 93-C-471-E
)	
ALEXANDER JOWELL HOGAN,)	
)	
Defendant.)	

ORDER

Upon the motion of the plaintiff, United States of America, to which there is no objection, it is hereby ORDERED that all claims against the defendant, Alexander Jowell Hogan, be dismissed without prejudice, the parties to bear their own costs and attorney's fees.

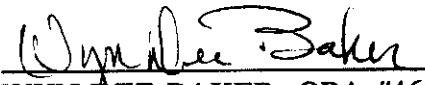
Dated this 4 day of January, 1994.

S/ JAMES G. ELLISON

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

STEPHEN C. LEWIS
UNITED STATES ATTORNEY


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, OK 74103

FILED ON DEC 17
JAN 6 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN -5 1993

ARTHUR WAYNE MILLER,
Petitioner,
vs.
JACK COWLEY, et al.,
Respondent.

No. 92-C-988-C

ORDER

Before the Court are Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, Respondent's response, Petitioner's reply ("traverse"), and Respondent's supplemental response.

Petitioner is presently incarcerated pursuant to convictions in the District Court of Tulsa County in Case Nos. CRF-87-662, CRF-86-3664, and CRF-85-1232.

In July 1992, Petitioner filed this instant petition raising constitutional challenges to the 1988 amendments to Okla. Stat. tit. 57, §§ 138 and 224 (Supp. 1988) (the earned-time-credit statute). Petitioner asserted (1) that the amended version of sections 138 and 224 was an ex post facto law; (2) that his parole eligibility under Okla. Stat. Ann. tit. 57, § 365 (West 1991) (pre-parole conditional supervision program) was delayed in violation of the Due Process Clause because the calculation of his earned-time credits could not be corrected until thirty days before his release date; and (3) that he was entitled to credits under both the pre-amended and the amended versions of the earned-time-credit statute.

In his "Traverse," Petitioner asserted his earned-time credits

should be calculated under the pre-amended version of section 138 because the amended version deprived him "of four (4) to five (5) days [of earned-time credits] per month, totalling 48 to 60 days per year." (Document #4.)

I. BACKGROUND

A. Statutory Provisions

At the time of Petitioner's convictions, the DOC awarded each inmate credits according to the type of job or activity he was engaged in. Every inmate who worked or attended school earned one-credit day for each day he engaged in such activity. Okla. Stat. tit. 57, § 138(A) (Supp. 1985). Every inmate who worked for the Oklahoma State Industries, Private Prison Industries, or Agricultural Production or satisfactorily participated in a vocational training program earned two-credit days for each day he engaged in such activity. Id. § 138(B). Every inmate who instead worked for a state, county, or municipality earned three-credit days for each day he worked. Okla. Stat. tit. 57, § 224(A) (1981).

In addition to these earned time credits, an inmate was entitled to a deduction of twenty days for each pint of blood he donated to the American Red Cross or to any approved agency or hospital. Okla. Stat. tit. 57, § 138(B) (1981). However, no inmate could receive credit for more than four donations in any twelve-month period. Id. The statute further provided that blood-time credits could not be revoked by the Department of Corrections or any of its delegated authorities. Id.

Effective November 1, 1988, the Oklahoma Legislature amended section 138 so that "[e]very inmate . . . shall have their term of imprisonment reduced monthly, based upon" the assignment to one of four class levels. Okla. Stat. tit. 57, § 138(A) (Supp. 1988). Under this system, possible credits range from zero per month (Class 1) to 44 per month (Class 4). Id. § 138(C)(2). Educational achievement and completion of departmentally approved programs also entitle an inmate to earn credits, but in no case more than ninety credits per calendar year. Id. § 138(F). Section 224, amended at the same time, also displaces the set credits for work assignments with a state, county, or municipality, and instead, references section 138 for calculations of those credits. Okla. Stat. tit. 57, § 224(A) (Supp. 1988). The 1988 amendments further provided that as of November 1, 1988, "all inmates currently under the custody of the Department of Corrections shall receive their assignments and all credits from that date forward shall be calculated pursuant to this act." Id. § 138(H) (Supp. 1988).

B. Case Law and DOC's Response

In Ekstrand v. State, 791 P.2d 92, 95 (Okla. Crim. App. 1990), abrogated on other grounds, Waldon v. Evans, 861 P.2d 311 (Okla. Crim. App. 1993), the Oklahoma Court of Criminal Appeals found that:

[A]fter a comparison of the statutes, before and after the amendment, it is obvious that 57 O.S. Supp. 1988, §§ 138 and 224 are disadvantageous to petitioner and other similarly situated prisoners. On its face, the amended statute adds requirements and reduces the number of monthly earned credits available to an inmate who abides

by prison rules and adequately performs his or her assigned tasks. By definition, this reduction lengthens the period that someone in petitioner's position must spend in prison. Thus, the amended statute constricts an inmate's opportunity to earn early release, and thereby makes more onerous the punishment for crimes committed before its enactment. This result simply runs afoul of the prohibition against ex post facto laws.

The court then held that inmates "who are disadvantaged by the amended statute, shall be entitled to the credits allotted under the statute effective on the date their crime was committed." Id.

In State ex. rel. Maynard v. Page, 798 P.2d 628, 629 (Okla. Crim. 1990), the Oklahoma Court of Criminal Appeals clarified its holding in Ekstrand by stating that an inmate was not entitled to benefits under both the original (1981) and amended (1988) statutes, but was entitled only to credits allotted under the statute effective on the date the crime was committed.

Following the Ekstrand opinion, the DOC implemented a procedure whereby all inmates received credits on a monthly basis under the amended version. If an inmate believed he had been disadvantaged by application of the credit under the amended version, he could apply for the additional credits he would have received under the old version. The DOC, however, did not award the pre-1988 credits until thirty days before discharge, and required the inmates to keep track of their pre-1988 credits. The DOC had apparently misinterpreted the Ekstrand holding to mean that a sentence could not be reduced by the pre-November 1, 1988 credits until the prisoner was entitled to immediate discharge.

In April 1993, the Eastern District of Oklahoma held that the amended version of sections 138 and 224 was ex post facto as

applied to inmates whose crimes were committed before November 1, 1988, and thus, that inmates with pre-1988 crimes were entitled to credits only under the pre-1988 statute. The court held that the amended version was so dissimilar to the pre-existing statute that the statutes could not be compared. The court further held that it was not clear that the Oklahoma legislature had intended to make available credits under the amended version to inmates whose crimes were committed before November 1, 1988. Lastly, the Court held that the DOC should provide each inmate a monthly computation of the pre-November 1, 1988 credits. Scales v. Reynolds, CIV-90-369-S and CIV-90-375-S, Order (adopting Report and Recommendation) (E.D. Okla. Apr. 7, 1993).

Following the Scales opinion, the DOC developed a new procedure for the monthly comparison and award of credits. Although all inmates still receive credits under the amended-credit statute, the DOC now makes a month-end comparison of the number of credits an inmate (who is incarcerated for a crime pre-dating the 1988 amendment) received under the amended statute and the number of credits he would have received under the pre-amended statute. If the credits under the pre-amended statute exceed those under the amended statute, the inmate's sentence is reduced according to the number of credits under the pre-amended statute for that month. If, on the other hand, the credits under the amended statute exceed those under the pre-amended statute, the inmate's sentence is reduced according to the number of credits under the amended statute for that month. The DOC then provides each inmate a

monthly print-out showing the total credits received.¹

II. DISCUSSION

A. Work Credits

In his first ground for relief, Petitioner contends that the amended version of sections 138 and 224 is ex post facto as applied to him, and thus, that the DOC should calculate his earned-time credits under the pre-amended version of sections 138 and 224.

A statute is not applied in violation of the ex post facto clause as long as it does not disadvantage an individual. Devine v. New Mexico Dept. of Corrections, 866 F.2d 339, 341 (10th Cir. 1989) (for a law to be ex post facto, it must be retrospective, and it must disadvantage the offender affected by it). As noted above, the DOC has implemented a procedure whereby the Petitioner's circumstances are evaluated on a monthly basis, and the Petitioner receives credits under the most advantageous version. Thus under the new procedure, it is impossible that the Petitioner will be disadvantaged, and therefore, it is equally impossible that he will be the subject of an ex post facto violation. Accordingly, Petitioner is not entitled to relief on his first ground.

B. Parole Eligibility

Petitioner next asserts that his parole eligibility was

¹To implement this new policy, the DOC made a lump sum award in August 1993, of those credits which prior to that date had been carried on DOC's records but had not yet been awarded to eligible inmates pursuant to DOC's previous policy.

delayed in violation of the Due Process Clause because the calculation of his earned-time credits could not be corrected until thirty days before his release date. Respondent contends this claim is now moot in view of the DOC's new procedure. The Court agrees. As noted above, Petitioner is no longer required to wait until thirty days prior to his release date to apply for pre-1988 credits. The DOC now awards Petitioner credits on a monthly basis under the most advantageous version of the earned-time-credit statute. Accordingly, Petitioner's second ground for relief is moot.

C. Dual Credits

Lastly, Petitioner argues he is entitled to credits under both the pre-amended and the amended versions of the earned-time-credit statute because he is now required to perform additional tasks to earn good time credits.

In Maynard v. Page, 798 P.2d at 629, the Oklahoma Court of Criminal Appeals expressly held that an inmate was entitled to earn credits under either the pre-amended or the amended earned-time-credit statute. The plain language of the amended version of section 138 further shows that the legislature did not intend inmates to earn credits under both the pre-amended and the amended version of the earned-time-credit statute. Okla. Stat. tit. 57, § 138(A) & (H) (1988). See Weaver v. Graham, 450 U.S. 24, 38-39 (1981) (Rehnquist, J. concurring).

While the ex post facto portions of new laws should be void,

and any severable provisions which are not ex post facto may still be applied, Weaver, 450 U.S. at 36-37 n.22, the Court has concluded that the amended statute, as presently applied by the DOC, does not raise ex post facto concerns. See also Kelly v. Evans, CIV-92-698-C, Order (adopting Report and Recommendation) (W. D. Okla. Oct. 18, 1993) (holding that the ex post facto clause simply protects Petitioner from the retroactive application of the 1988 amendments when such application would be disadvantageous to him, and that nothing in the ex post facto prohibition entitles Petitioner to earn credits under both versions of the statute). The Court also notes that the pre-amended statute indirectly required good conduct as it was entitled "credits for good conduct, blood donations, training program participation, etc." Okla. Stat. tit. 57, § 138 (Supp. 1985). Accordingly, Petitioner is not entitled to dual credits.

III. CONCLUSION

ACCORDINGLY, IT IS HEREBY ORDERED that the petition for a writ of habeas corpus is **denied**.

IT IS SO ORDERED THIS

7 day of Jan 1994.



H. DALE COOK, Senior Judge
UNITED STATES DISTRICT COURT

JAN 6 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM J. SCHWEITZER,

Plaintiff,

vs.

CITY OF BARTLESVILLE, OFFICER
LARRY SILVERS, JR.,

Defendants.

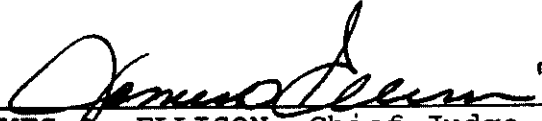
No. 93-C-750-E

JUDGMENTJAN 05 1994
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered in favor of the Defendants,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendants and that the action be dismissed on the merits.

ORDERED this 4th day of January, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

RECEIVED ON 1/6/93
JAN 6 1993

FILED

JAN 5 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WALTER E. MAHER,
Plaintiff,

vs.

ASSOCIATED MILK PRODUCERS, INC.,
a corporation,

Defendant.

Civil Action No. 93-C-0093-E

STIPULATION OF DISMISSAL

The Plaintiff and Defendant, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, stipulate to the dismissal without prejudice of Count III of Plaintiff's Amended Complaint and Defendant's Counterclaim contained in Defendant's Answer to Amended Complaint.

Respectfully submitted,

LIPE, GREEN, PASCHAL,
TRUMP & BRAGG, P.C.

By:

Constance L. Young
Richard A. Paschal, OBA #6927
Constance L. Young, OBA #14537
3700 First National Tower
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Tulsa, Oklahoma 74103-4344
(918) 599-9400

Attorneys for Plaintiff

- and -

MCCORMICK, ANDREW & CLARK

By: 

Stephen L. Andrew, OBA #294
D. Kevin Ikenberry, OBA #10354
Tulsa Union Depot
111 East First Street, Suite 100
Tulsa, OK 74103

Attorneys for Defendant

JAN 4 1993

FILED
IN OPEN COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HELEN GREY TRIPPET; et al.

Plaintiffs,

vs.

TRI TEXAS, INC. et al.

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

92-C-192-E

ORIGINAL
ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 3rd day of January, 1993 comes on for consideration before the Court the motion for dismissal of defendants Jarrell B. Ormand, Home-Stake Oil & Gas Company and Home-Stake Royalty Corporation. The Order of this Court entered November 4, 1993 dismissing the Home-Stake Oil & Gas Company and the Home-Stake Royalty Corporation is hereby withdrawn and the Court hereby makes the following findings:

1. Defendant Jarrell B. Ormand is the escrow agent for the Home-Stake stock certificates at issue herein.
2. Defendants Home-Stake Oil and Gas Company and Home-Stake Royalty Corporation are merely stake holders in this litigation by virtue of a restraining order entered on January 14, 1992 wherein both defendants were ordered to hold and retain all dividends paid on the stock at issue herein.
3. No claim for affirmative relief has been made against defendant Ormand, Home-Stake Oil and Gas, or Home-Stake Royalty other than to be bound to

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comply with this Court's rulings as to ownership of stock and entitlement to the dividends at issue.

4. Defendants Ormand, Home-Stake Oil and Gas, and Home-Stake Royalty should be dismissed with prejudice.

It is therefore ORDERED, ADJUDGED and DECREED that:

1. Defendants Jarrell B. Ormand, Home-Stake Oil and Gas Company, and Home-Stake Royalty Corporation shall comply with and be bound in all respects to the orders and judgments of this Court as to the ownership of stock and entitlement to dividends after their dismissal.
2. Defendants Jarrell B. Ormand, Home-Stake Oil and Gas Company, and Home-Stake Royalty Corporation are hereby dismissed with prejudice subject to the provisions in paragraph 1 of this order.

SIGNED at Tulsa, Oklahoma on the 3rd day of January, 1993.


HONORABLE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

JAN 4 1993
FILED

JAN 3 1994

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DONALD G. MCGUIRE,
443-50-2306

Defendant,

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

CIVIL NUMBER 93-C-560 E

NOTICE OF DISMISSAL

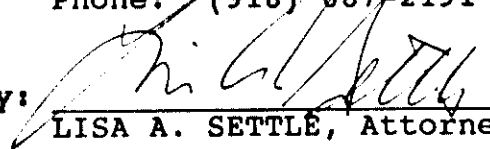
COMES NOW the Plaintiff, United States of America, by and through its attorney, Clifton R. Byrd, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

Clifton R. Byrd
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By:


LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1993, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: DONALD G. MCGUIRE, at 10606 East 4th Street, Tulsa, OK 74128.


GLORIA J. HIGHERS
Paralegal Specialist

ENTERED ON DOCKET

DATE

1-4-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MID-CONTINENT CASUALTY
COMPANY,

Plaintiff,

v.

ESSIE LEE JAMESON, as
Personal Representative of the
Estates of VIOLA LEE GORDON
and RAYMOND F. GORDON, SR.,
Deceased; VERRELLE GORDON,
NORWEST BANK as Conservator
of the Estates of BRENTON
GORDON, a minor, and MARY
GORDON, a minor,

Defendants.

Case No. 92-C-846-E

F I L E D

DEC 30 1993

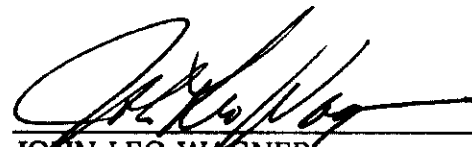
**Richard M. Lawrence, Clerk
U.S. DISTRICT COURT**

JUDGMENT

This action came on for hearing before the court, The Honorable John Leo Wagner, United States Magistrate Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff, Mid-Continent Casualty Company, with the parties to bear their own costs.

Dated this 30th day of December, 1993.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE

1-26-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DARLENE WESTMORELAND,
ADMINISTRATOR OF THE ESTATE
OF DANNY JOE WESTMORELAND,

Plaintiff,

vs.

M.B.E. LEASING & TRANSPORTATION,
INC.,

Defendant.

No. 92-C-860-E

FILED

DEC 30 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This matter came on for hearing on this 30th day of December, 1993 upon Plaintiff's application for order of dismissal. After hearing testimony, it is determined this case has been settled and should be dismissed with prejudice to future filing.

WHEREFORE, it is ordered adjudged and decreed this case is dismissed with prejudice to the future filing of the same.

Done this 30th Day of December, 1993.

S/John L. Wagner

~~U.S. Magistrate~~
Jon Leo Wagner
UNITED STATES MAGISTRATE JUDGE.

C/124

ENTERED ON DOCKET
DATE JAN 3 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM J. SCHWEITZER,

Plaintiff,

vs.

No. 93-C-750-E ✓

CITY OF BARTLESVILLE, OFFICER
LARRY SILVERS, JR.,

Defendants.

ORDER

The Court notes that in connection with this motion the Court has reviewed matters outside the pleadings. The Federal Rules provide that under such circumstances, the Court should convert the 12(b)(6) motion to a summary judgment under Fed.R.Civ.P. 56. Therefore, the Court will deal with Defendant's 12(b)(6) motion as a Rule 56 summary judgment motion. Initially, the Court takes note of well settled law regarding summary judgments. The Federal Rules of Civil Procedure provide that summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). While it is the duty of the Court to grant a motion for summary judgment in an appropriate case, the relief contemplated by Fed.R.Civ.P. 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes. Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (Tenth Cir. 1975); Jones v. Nelson, 484

F.2d 1165, 1168 (Tenth Cir. 1973); Machinery Center, Inc. v. Anchor National Life Insurance Co., 434 F.2d 1, 6 (Tenth Cir. 1970).

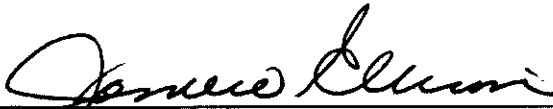
Summary judgment must be denied unless the moving party demonstrates entitlement to it beyond a reasonable doubt. Norton v. Liddell, 620 F.2d 1375, 1381 (Tenth Cir. 1980); Madison v. Deseret Livestock Co., 5574 F.2d 1027, 1037 (Tenth Cir. 1978). The Court must liberally construe pleadings in favor of the party opposing summary judgment. Harsha v. United States, 590 F.2d 884, 887 (Tenth Cir. 1979); Harmon v. Diversified Medical Investments Corp., 488 F.2d 11, 113 (Tenth Cir. 1973), cert. denied, 425 U.S. 951 (1976). If there is any indication of a genuine issue as to any material fact, summary judgment should not be granted. Exnicious v. United States, 563 F.2d 418, 424 (Tenth Cir. 1977); Phillips Machinery Co. v. LeBlond, Inc., 494 F.Supp. 318, 324-325 (N.D. Okla. 1980).

The Court finds summary judgment is appropriate. Here, Plaintiff has failed to establish evidence of a custom or policy on behalf of the Defendant City of Bartlesville to support his 42 U.S.C. §1983 cause of action. Likewise, Plaintiff's conviction in the underlying Court proceeding, coupled with Plaintiff's allegations pertaining to Defendant Officer Silvers' conduct does not give rise to a §1983 civil cause of action. See Pierce Oil v. Mitchell, 99 Okl. 148, 225 P. 937 (1924); Lenard v. Argento, 699 F.2d 874 (7th Cir. 1983), cert. denied, 464 O.S. 815, 104 S.Ct. 69, 78 L.Ed.2d 84 (1983).

Bearing in mind the standards to be applied, and having

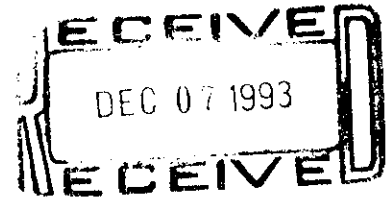
carefully reviewed the entire record in this case, the Court is of the opinion that this is an appropriate case in which to grant summary judgment.

ORDERED this 27th day of December, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE JAN 03 1994



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RURAL WATER DISTRICT NO. 7,
NOWATA COUNTY, OKLAHOMA,

Plaintiff,

v.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

Defendant.

Case No. 93-C-793-B

FILED

DEC 29 1993

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW, the Plaintiff, Nowata Water District No. 7, Nowata County, Oklahoma, and the Defendant, United States Fidelity & Guaranty Company, and stipulate to the dismissal with prejudice of Plaintiff's claim and cause of action in its Complaint. Plaintiff and Defendant have entered into a compromise settlement covering the claim and cause of action in Plaintiff's Complaint against Defendant and therefore stipulate to this dismissal with prejudice, with each party to bear its own attorneys' fees and costs.

Respectfully submitted this 26th day of November, 1993.

LOGAN & LOWRY
P. O. Box 558
Vinita, OK 74301-0558
(918) 256-7511

Attorneys for Plaintiff

By: 

Richard W. Lowry, O.B.A. #5552
Donna L. Smith, O.B.A. #12865

NOWATA WATER DISTRICT NO. 7,
NOWATA COUNTY, OKLAHOMA

By: 

FENTON, FENTON, SMITH, RENEAU & MOON
One Leadership Square, Suite 800
211 North Robinson
Oklahoma City, OK 73102

Attorneys for Defendant

By: 

C. William Threlkeld, OBA # 9005

UNITED STATES FIDELITY & GUARANTY
COMPANY

By: 

ENTERED ON DOCKET

DATE DEC 29 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NEW YORK LIFE INSURANCE COMPANY,
a New York Corporation,

PLAINTIFF,

v.

CASE NO. 93-C-1049-B

RAMCO HOLDING CORPORATION,
a Delaware corporation,
OKLAHOMA DOUBLE R CORPORATION,
f/k/a DOUBLE R CORPORATION,
a Delaware corporation,
THE RAM GROUP, LTD.,
an Oklahoma corporation,
RAMCO OIL & GAS, INC.,
a Delaware corporation,
RAM ASSET MANAGEMENT CO.,
an Oklahoma corporation,
RAM RESERVE CONSOLIDATION, INC.,
a Delaware corporation, and
RB OPERATING COMPANY,
an Oklahoma corporation,

DEFENDANTS.

FILED

DEC 29 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

PLAINTIFF'S NOTICE OF PARTIAL DISMISSAL

Pursuant to Fed.R.Civ.P. 41(a)(1)(i), notice is given that Plaintiff hereby dismisses its claims for relief alleged in the above-entitled and numbered action against two (2) Defendants, neither of which have heretofore filed an answer or a motion for summary judgment herein:

The RAM Group, Ltd., an Oklahoma corporation,
and

RAM Asset Management Co., an Oklahoma
corporation.

Plaintiff reserves all of its claims for relief alleged against the balance of the Defendants named in the above-entitled and numbered action.

The Clerk of the above-entitled Court is hereby requested to enter this Partial Dismissal in the records of the Court.

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: 

J. Warren Jackman, OBA #4577
Kevin M. Abel, OBA #104
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 581-5500
(918) 581-5599 (Fax)

ATTORNEYS FOR NEW YORK LIFE

CERTIFICATE OF SERVICE

I, J. Warren Jackman, hereby certify that on the 29th day of December, 1993, I mailed a true and correct copy of the above and foregoing Notice unto:

John N. Hermes, OBA #4133
Drew D. Webb, OBA #11560
MCAFEE & TAFT
Two Leadership Square
10th Floor
Oklahoma City, Oklahoma 73102
(405) 235-9621
(405) 235-0439 (Fax)

Attorneys for Defendants.


J. Warren Jackman, OBA #4577

DATE 1-3-94

F I L M D

No. 93-C-1124-E

DEC 30 1993
Richard M. Lamm, Clerk
U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

Before the court is Petitioner's motion for leave to proceed in forma pauperis and application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Upon review of the petition, it has come to the court's attention that Petitioner was convicted in Oklahoma County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Petitioner's motion for leave to proceed in forma pauperis is granted.
- (2) Petitioner's application for a writ of habeas corpus is transferred to the Western District of Oklahoma for all further proceedings. See 28 U.S.C. § 2241(d).

IT IS SO ORDERED this 29th day of December, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 1-3-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

EXOKO GAS TECHNOLOGIES, INC.,)

Plaintiff,)

vs.)

PLUMBING PRODUCTS DIVISION,)
MASCO CORPORATION OF INDIANA,)

Defendant.)

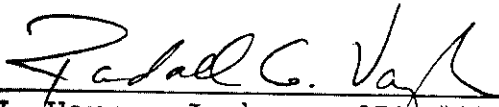
DEC 3 1993

Richard A. Jackman, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

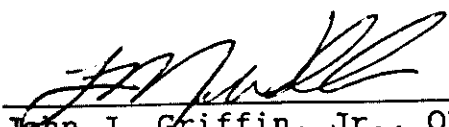
Case No. 93-C-0225 E

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Exoko Gas Technologies, Inc. ("Exoko"), and Defendant Plumbing Products Division, Masco Corporation of Indiana, ("Masco"), stipulate that their respective claims against one another in this lawsuit, including without limitation Exoko's claims against Masco as alleged in the original Complaint and Masco's counterclaims against Exoko as alleged in Masco's Counterclaims, should be dismissed with prejudice to refileing, with each party to bear its own costs, expert witness fees, attorneys' fees and other costs and expenses associated with this litigation.


J. Warren Jackman, OBA #4577
Randall G. Vaughan, OBA #11554
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 581-5500

ATTORNEYS FOR PLAINTIFF,
EXOKO GAS TECHNOLOGIES, INC.



John J. Griffin, Jr., OBA #3613
L. Mark Walker, OBA #10508
CROWE & DUNLEVY
A Professional Corporation
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102
(405) 235-7700

ATTORNEYS FOR DEFENDANT,
MASCO CORPORATION OF INDIANA

ENTERED ON DOCKET

DATE 1-3-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GREAT LAKES CARBON CORPORATION,)
a Delaware corporation,)

Plaintiff,)

vs.)

Case No. 93-C-651-E

CONTINENTAL NATURAL GAS, INC.,)
an Oklahoma corporation,)

Defendant.)

FILED

DEC 3 1993

**PARTIES' JOINT STIPULATION
OF DISMISSAL**

Richard A. ... Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Pursuant to Rules 41(a)(1)(ii) and 41(c), Fed. R. Civ. P., all the parties hereto stipulate for the dismissal with prejudice of (i) the case, (ii) the Plaintiff's Complaint, (iii) the Defendant's Counterclaim, and (iv) all claims that were or could have been stated in such pleadings, with each side to bear its own costs, expenses, and attorneys' fees.

DOUGLAS L. INHOFE, OBA No. 4550
MARK A. WALLER, OBA No. 14831

By 

SHIPLEY, INHOFE & STRECKER
3600 First National Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4307
(918) 582-1720

Attorneys for
GREAT LAKES CARBON CORPORATION

JAMES W. RUSHER
KENNETH F. ALBRIGHT
HEATH E. HARDCASTLE

By 

ALBRIGHT & RUSHER
2600 Bank IV Center
15 West Sixth Street
Tulsa, OK 74119-5434

Attorneys for
CONTINENTAL NATURAL GAS, INC.